



COMMONWEALTH OF PENNSYLVANIA

January 16, 2020

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Implementation of Act 120 of 2018 / Docket No. M-2019-3013286

Dear Secretary Chiavetta:

Enclosed please find the Reply Comments, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on the parties indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "EK Fure".

Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245

Enclosures

cc: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 120 of 2018

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Docket No. M-2019-3013286

**REPLY COMMENTS
OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

**Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245**

**For: John R. Evans
Small Business Advocate**

**Commonwealth of Pennsylvania
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101**

Date: January 16, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 120 of 2018 :
: **Docket No. M-2019-3013286**
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**REPLY COMMENTS OF THE
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I. INTRODUCTION

On October 3, 2019, the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) issued an Order directing the development of staff recommendations, led by the Bureau of Technical Utility Services (“TUS”) and the Law Bureau, for additional parameters related to the replacement of customer-owned lead water service lines (“LSLs”) and damaged wastewater laterals (“DWWLs”) in response to Act 120 of 2018, which amended the Pennsylvania Public Utility Code (the “Code”). On October 24, 2019, the Commission issued a Secretarial Letter inviting stakeholders to provide comments to directed questions related to Act 120 of 2018, and its amendments to the Code.

The County of Northampton submitted comments on November 19, 2019. Pennsylvania-American Water Company (“PAWC”) submitted comments on November 21, 2019. The Office of Small Business Advocate (“OSBA”) submitted comments on November 22, 2019. The Office of Consumer Advocate (“OCA”), Aqua Pennsylvania, Inc. (“Aqua”), the Natural Resources Defense Council (“NRDC”), the Pittsburgh Water and Sewer Authority (“PWSA”), Columbia Water Company, and SUEZ Water Pennsylvania, Inc. (“SWPA”) also submitted comments on

November 22, 2019. Joint Comments of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Green and Healthy Homes Initiative (“GHHI”), and Pittsburgh United (“UNITED”) were submitted on November 22, 2019 as well.

On December 19, 2019, a Working Group Meeting was held to allow stakeholders to further comment on the Implementation of Act 120.

The OSBA submits the following Reply Comments for consideration by the Commission.

II. BACKGROUND OF OSBA’S INTEREST IN LSL AND DWWL ISSUES

The Small Business Advocate is authorized and directed to represent the interests of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 – 399.50.

The OSBA submits these Reply Comments to protect the interest, survival, and growth of small businesses in Pennsylvania.

III. REPLY COMMENTS

The OSBA’s Reply Comments will focus on one issue of paramount concern to this office: how LSL and DWWL replacement costs should be allocated between customer classes to ensure just and reasonable rates. As noted in the OSBA’s initial comments, the costs associated with LSL and DWWL replacements should be allocated to classes in the same fashion that (i) water utilities currently allocate service line costs and (ii) wastewater utilities currently allocate wastewater lateral costs to rate classes.¹ Adopting this method would ensure just and reasonable rates by allocating replacement costs in proportion to the weighted average cost of water service

¹ *Comments of the Office of Small Business Advocate*, at p. 8.

lines and/or wastewater laterals across customer classes. LSL and DWWL replacement costs should not be treated differently for cost allocation purposes unless one or more rate classes are excluded from participating in a LSL and/or DWWL replacement program.² If one or more rate classes are excluded from participating in a replacement program, replacement costs should be directly assigned to participating classes in proportion to the weighted average cost of water service lines and/or wastewater laterals across participating customer classes.³

Cost causation is a basic tenant in utility law ratemaking. The Commonwealth Court of Pennsylvania unambiguously decided that cost of service should be the “polestar” criterion for rate-setting. *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006), *allocator denied*, 916 A.2d 1104 (Pa. 2007). It has long been Commission precedent that the cost of providing service is the guiding principle in ratemaking, and there exists no compelling reason to deviate from that precedent.

A. OSBA Response to Joint Comments of CAUSE-PA/GHHI/UNITED and NRDC Comments

In their Joint Comments, CAUSE-PA/GHHI/UNITED recommend that the costs of LSL remediation programs should be shared across all customer classes because all customers benefit from the system and benefit from a “vibrant, healthy, and economically stable community as a whole.”⁴ The NRDC supports this position and additionally posits that the Commission should treat LSL replacement as a benefit to the general public.⁵ However, neither CAUSE-

² Id.

³ Id., at pp. 8-9.

⁴ *Joint Comments of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania, the Green & Healthy Homes Initiative, and Pittsburgh United*, at p 7.

⁵ *COMMENTS: Implementation of Act 120 of 2018, Docket No. M-2019-3013286*, by the National Resources Defense Council, at p. 5.

PA/GHHI/UNITED nor NRDC provide a specific methodology for allocating LSL remediation costs across customer classes.

The OSBA does not object to all classes sharing in the cost of LSL remediation programs, as long as the resulting allocations follow cost causation principles. CAUSE-PA/GHHI/UNITED and NRDC suggest that the Commission ignore cost causation and allocate costs in some undefined, nebulous manner that would, presumably, act to lessen the cost-based allocation otherwise assigned to the residential class. Such a position must be rejected as it will result in unjust and unreasonable rates in violation of Section 1301(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §1301(a). CAUSE-PA/GHHI/UNITED's position will also likely lead to violating the principles of eliminating cross-class subsidization. *Lloyd*, 904 A.2d at 1019-1021. Such a result can be avoided by adopting the OSBA's position to employ cost causation principles when allocating LSL and DWWL replacement costs among rate classes.

Furthermore, adoption of CAUSE-PA/GHHI/UNITED's position will also violate Section 1304, 66 Pa. C.S. §1304, as it will create an unreasonable preference or advantage for one customer class and an unreasonable disadvantage or prejudice to other customer classes. Section 1304, 66 Pa. C.S. § 1304, prohibits public utilities from making or granting an unreasonable preference in ratemaking to any person or subjecting any person or corporation to any unreasonable prejudice or disadvantage. Not all customer classes are equally impacted by LSLs. Sharing LSL replacement costs among customer classes in a non-cost-based manner would subsidize the costs of customer classes with higher LSL saturation levels to the detriment of customer classes with lower saturation levels.

Finally, the "benefits" that CAUSE-PA/GHHI/UNITED allege to exist will not necessarily be experienced by any class, let alone all classes. The OSBA is unconvinced that

there is any causal connection between economic stability and the replacement of LSL and DWWLs, and CAUSE-PA/GHHI/UNITED's comments have not demonstrated that connection. While replacing LSLs certainly mitigates the damaging health effects of lead in a water system, it is a stretch to claim that any benefits above and beyond mitigation of that harm will materialize as a result of replacing LSLs. Additionally, if the mere observation that consumers generally benefit from the existence and operation of a water system was sufficient to support all classes paying for system improvements, then cost causation would arguably never be a consideration in ratemaking treatment; however, the Commission and Commonwealth Court have expressly found that cost causation is not only one of the criterion for setting rates, it is the polestar.

B. OSBA Response to PWSA's Comments

PWSA proposed that residential LSL and DWWL replacement costs should be allocated to all customer classes.⁶ In support of its position, PWSA makes the bald claim that community and members of the public benefit from LSL and DWWL replacements, but provides no articulation of what these benefits are, nor any specification of the magnitude of the benefits experienced by the general public from residential LSL and DWWL replacements. The OSBA posits that PWSA's public benefit argument might be slightly more compelling if all rate classes were eligible for LSL and DWWL replacements, as removing lead from the drinking water at hotels, churches, restaurants, medical centers, daycare facilities, etc. would likely have a more direct impact on the general public and community. However, PWSA indicates that its LSL replacement policy includes private side replacement for residential customers only and not commercial customers.⁷ Commercial and industrial customers are entirely excluded from

⁶ *The Pittsburgh Water and Sewer Authority's Responses to the Directed Questions in the Pennsylvania Public Utility Commission's October 24, 2019 Secretarial Letter Regarding the Implementation of Act 120 of 2018*, at p. 10-11.

⁷ *Id.*, at p. 6.

PWSA's LSL replacement policy, even though these customers may have LSLs. As a result, non-residential customers receive no direct benefits from PWSA's LSL replacement policy. Furthermore, PWSA is wrong to claim that its LSL replacement program provides a general public benefit in the form of safe drinking water because non-residential LSLs will continue to exist on PWSA's system under its current LSL replacement policy. In short, PWSA proposes to tax its non-residential classes to pay for a program that only benefits the residential class. The legislature has rightfully rejected this approach when it comes to recovering the cost of class-specific energy efficiency and conservation plans,⁸ and the Commission should likewise reject PWSA's proposal here. Socializing the cost of class specific programs for recovery purposes is the very definition of discriminatory, and is entirely impermissible under Section 1304, 66 Pa. C.S. 1304.

C. Allocating LSL and DWWL Costs that are Not Caused by Small Business Customers Would Economically Harm Small Business Development in the Commonwealth

The OSBA respectfully submits that socializing LSL and DWWL replacement costs for the purpose of shifting such costs to other rate classes would have a detrimental effect on small businesses across the Commonwealth.

When testifying last year on the effect of HB 11, which was projected to increase small business rates by an average of \$1,300 annually, the OSBA explained:

[An increase of this level] will have a significant impact on both the marginal costs and operations of these businesses. If HB 11 passes in its current form, small business owners may be forced to absorb these increases personally, pass through these increases to their customers, delay pay raises for workers or delay hiring new workers. Any of these results cut into a small business's bottom line, which could

⁸ See 66 Pa. C.S. §2806.1(a)(11).

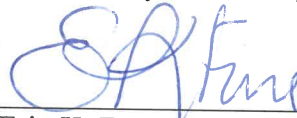
cause a stall or decline in small business growth across the Commonwealth. Such a decline would seriously impact the Commonwealth's economy.⁹

Although this proceeding does not concern HB 11, the rate impact involved is potentially similar, as are the detrimental effects of these charges if thrust upon small business customers.

IV. CONCLUSION

The OSBA respectfully requests that the Commission adopt the position set forth in these Reply Comments. To do otherwise would circumvent Commission precedent, would result in discriminatory rates, and would be harmful to the economic standing, growth, and development of small businesses across the Commonwealth.

Respectfully submitted,



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Date: January 16, 2020

⁹ See *Testimony of the Pennsylvania Small Business Advocate* to the Pennsylvania House of Representatives House Consumer Affairs Committee, Hearing HB 11, May 6, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Dated: January 16, 2020



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